

1 THE WITNESS: Yes, it's right
2 here. The direct testimony. It's on page 30.

3 MR. BURKE: This is MASN Exhibit
4 238.

5 JUDGE SIPPEL: Right. You keep
6 calling it a report. It's not a report. It's
7 your testimony.

8 THE WITNESS: Correct, and I've
9 written so many things in this proceeding I
10 sometimes confuse them, but this one was
11 actually called the direct testimony. The
12 prior one I think was called expert report.

13 JUDGE SIPPEL: All right. But
14 this one you're --

15 BY MR. BURKE:

16 Q So Table 1 reflects the MASN rate
17 card. Is that right, Dr. Singer?

18 A Correct.

19 Q And it shows that the price in
20 Zones 1 through 3 in 2008 was [REDACTED] per
21 subscriber, right?

22 A Correct.

1 THE WITNESS: He's referring to
2 this.

3 JUDGE SIPPEL: What page are you
4 on?

5 THE WITNESS: Table one, page 30.

6 JUDGE SIPPEL: Page 30?

7 THE WITNESS: Yes, sir.

8 JUDGE SIPPEL: I'm with you.

9 BY MR. BURKE:

10 Q So in the D.C./Baltimore zones,
11 the price per subscriber is [REDACTED] per sub,
12 right, Dr. Singer, in 2008?

13 A Correct.

14 Q And in Zone 4 which is what we're
15 at issue here the price was [REDACTED] less or more
16 than [REDACTED] per subscriber.

17 A Correct.

18 Q So a subscriber located in Zones 1
19 through 3 earns MASN more than [REDACTED] more per
20 subscriber than it does in the areas that
21 we're talking about here.

22 A In terms of licensing revenues,

1 yes.

2 Q And it also earns less in terms of
3 advertising revenues, too, doesn't it?

4 A My understanding actually is that
5 the advertising rates are determined on a per
6 eyeball basis. So I'm not aware that MASN
7 makes more money on a per eyeball basis for
8 eyeballs in the core than they do on the
9 periphery.

10 Q Didn't you indicate in your
11 testimony in the Adelphia matter that
12 subscribers located in D.C. area are more
13 valuable to advertisers than subscribers
14 located in the fringe areas?

15 A They could be more valuable. I'm
16 just -- I'm not sure based on the question
17 just asked is that increased value shown or
18 reflected in higher rates or is in fact the
19 advertising rates blended average of all the
20 eyeballs that you hit.

21 Q And so you do have a personal
22 knowledge of how MASN prices its advertising?

1 A No, I do not.

2 Q So you don't know whether MASN
3 charges the same amount of eyeballs located in
4 fringe areas or less for eyeballs located in
5 fringe areas.

6 A It's possible that they do, but in
7 my conversations with MASN I have not heard
8 that.

9 Q But you haven't heard really
10 anything to tell you how they price in the two
11 different areas, right?

12 A The only thing that I can recall
13 hearing in my interviews when the subject came
14 up about advertising rates is that advertising
15 is denominated on a per eyeball basis and so
16 that if we lose or MASN loses subscribers,
17 loses eyeballs, that the advertising revenues
18 fall. That's the extent to a large part of my
19 knowledge.

20 MR. BURKE: May I approach the
21 witness, Your Honor?

22 JUDGE SIPPEL: You may.

1 BY MR. BURKE:

2 Q This is Comcast 83. Do you
3 recognize this document, Dr. Singer?

4 A Yes, I do.

5 Q Can you identify it for us?

6 A It appears to be a submission on
7 behalf of MASN to the FCC. Given the date I
8 imagine it was done pursuant to the Adelphia
9 proceeding and attached in an appendix towards
10 the end is the declaration that I co-authored.

11 Q So beginning on page Com 83-10
12 there is a document that is entitled "Second
13 Supplement Declaration of J. Gregory Sidak and
14 Hal J. Singer." Do you see that?

15 A Yes.

16 Q That's what you're referring as
17 your submission here.

18 A Yes.

19 Q And I think this was also a
20 submission that was made under oath just like
21 your testimony in this case.

22 A Sure.

1 Q And you actually signed it on the
2 last page under penalty of perjury just like
3 your testimony in this case.

4 A Yes.

5 Q That's Comcast 83-19. I'd like to
6 direct you to paragraph six of your document,
7 your submission, page five. Could you read
8 paragraph six, Dr. Singer? Out loud for us if
9 that's possible.

10 A Sure. "Moreover, Higgins and
11 Ordoover also ignore the fact that MVPD
12 subscriber inside the Washington DMA represent
13 a wealthier audience than the rest of the MASN
14 footprint and therefore attract greater
15 advertising dollars. According to census
16 data, the average household income within the
17 Washington DMA was \$76,505 in 1999. The
18 average household income of counties outside
19 the Washington DMA but inside the MASN
20 footprint was \$53,687. These two attributes,
21 proximity to Washington D.C. and household
22 income, imply that a subscriber's willingness

1 to pay for Nationals games in Lancaster,
2 median household income of \$45,000, and 78
3 miles from Philadelphia is significantly less
4 than the willingness to pay for Nationals'
5 games of a subscriber in Fairfax County,
6 median income of \$81,000, 155 miles from
7 Philadelphia. Hence, it is incorrect for
8 Ordoover and Higgins to suggest that all
9 households within the MASN footprint are equal
10 in the eyes of MASN, its subscribers or its
11 advertisers."

12 Q Do you still believe this
13 statement as accurate, Dr. Singer?

14 A I do. One thing that I'm
15 stumbling on is I wrote 155 miles from
16 Philadelphia which I think is correct. But I
17 believe this is true and it's correct, yes.

18 Q And you continue to believe that
19 subscribers located in the Washington DMA
20 attract greater advertising revenues than do
21 subscribers located in other parts of the MASN
22 footprint.

1 A In the following sense if I may.
2 You're probably familiar with the term "split-
3 fee advertising" which is an opportunity for
4 MASN to sell a targeted ad in Washington and,
5 of course, a targeted ad in Washington in my
6 opinion will fetch more for MASN than a
7 targeted ad in some rural and relatively poor
8 part of Pennsylvania for these two reasons
9 that I cite in this paragraph.

10 Now with respect to an ad that
11 gets beamed across the entire MASN footprint,
12 I'm not sure that the pricing of that ad has
13 a tiered structure such that the advertiser
14 pays more for the Washington eyeballs than it
15 does for the Lancaster eyeballs. So I'm just
16 trying to reconcile the two statements for
17 you.

18 Q Okay. But you don't really know
19 whether MASN charges a uniform price per
20 eyeball or not.

21 A When -- I don't know for sure, but
22 based on the conversations that I've had with

1 MASN executives, my understanding is that the
2 prices for a blanket ad that covers all of
3 MASN's territories denominated on an eyeball
4 basis. It's not a differential pricing
5 scheme.

6 Q And does --

7 A Now it's possible that they do,
8 but if they do I haven't uncovered that.

9 Q And MASN doesn't always sell ads
10 on a blanket basis throughout its entire
11 footprint, does it?

12 A They don't always. So sometimes
13 they can offer if the MVPD supports it,
14 obviously that was another fight between these
15 parties, but if the MVPD supports targeted
16 advertising then I would expect that the price
17 per eyeball in the Washington DMA would be
18 higher for the two reasons that I list here
19 than a price per eyeball ad sold in rural
20 Pennsylvania.

21 Q Okay. So just to try to sum up
22 here. We've got about a [REDACTED] of MASN

1 subscribers that are in dispute in this case.

2 You testified to that earlier, right?

3 A When denominated in terms of the
4 entire potential subscribers of MASN I can't
5 argue with that math.

6 Q And those [REDACTED] subscribers
7 are ones who will pay over [REDACTED] less per sub
8 than subscribers in the core area, right?

9 A When you just focus on the
10 licensing, the foregone licensing revenue,
11 that's correct.

12 Q So for foregone licensing
13 revenues, those are less valuable subscribers
14 than in the core area. I think you testified
15 to that.

16 A That's correct. I can't argue
17 with the math that [REDACTED] is less than [REDACTED]
18 something. That's correct.

19 Q And then also with respect to that
20 [REDACTED], the disputed subscribers, to the
21 extent that one is able to target advertising
22 to them or target advertising toward the D.C.

1 or Baltimore area, they're likely to be less
2 a desirable advertising revenue as well.

3 A Yes, and let me just make this
4 absolutely clear that for targeted ads you're
5 absolutely right that someone in the periphery
6 especially if they're in a poor area is going
7 to be less valuable than someone in the core.
8 However, for a blanket ad that covers the
9 entire footprint losing [REDACTED] subscribers in
10 the periphery is just as damaging as losing
11 [REDACTED] in the core according to my
12 understanding.

13 Q And you don't have any idea as to
14 what proportion of MASN's ads are targeted
15 versus sold on a blanket basis, do you, Dr.
16 Singer?

17 A No, I do not.

18 JUDGE SIPPEL: Could you explain
19 that to me?

20 THE WITNESS: Sure. Let me try.

21 JUDGE SIPPEL: Targeted. I
22 understand what you're saying about a target,

1 the value of a targeted ad. What is a blanket
2 ad?

3 THE WITNESS: So when I use the
4 word blanket ad, I'm not sure if I've got the
5 nomenclature precise. But if MASN were to
6 sell an ad that's going to hit everyone in
7 their footprint.

8 JUDGE SIPPEL: All right. Same
9 time.

10 THE WITNESS: Same time. Same ad.
11 That is they don't try to split their feed up
12 in ways that gives people in Washington one ad
13 and people in Baltimore another ad, if they
14 just try to target everyone in the footprint
15 with one ad, my understanding is the price of
16 that ad, if you're an advertiser and you
17 approach MASN --

18 JUDGE SIPPEL: Yes.

19 THE WITNESS: The price is
20 denominated in terms of number of eyeballs.
21 From my conversations with Mr. Cuddihy and Mr.
22 McGuinness, my understanding is that if you

1 remove [REDACTED] from MASN's footprint
 2 advertising revenues falls according to some
 3 formula in that contract that was denominated
 4 on price per eyeball basis. My understanding
 5 sitting here today is that if you rip out the
 6 [REDACTED] from the periphery, it falls by the
 7 same amount than if you were to rip it out
 8 from the core. But that's just my
 9 understanding.

10 And also I should say that if I
 11 found out that MASN in fact does charge
 12 differentially there would still be foregone
 13 revenue. But let's keep going.

14 BY MR. BURKE:

15 Q When you say price per eyeball,
 16 that's not just paid on a per subscriber basis
 17 in every area. Isn't it based on ratings in
 18 each of those areas as well?

19 A I'm not sure if the price varies
 20 in the contract according to the ratings. The
 21 ratings certainly could influence before the
 22 contract is written what the price is. But

1 I'm not sure if the contract says that if we
2 fall in the ratings the price will fall. I'm
3 just not sure.

4 Q Yes, but when you speak to the
5 eyeballs in this case I want to make it clear.
6 Is that just an automatic there's [REDACTED]
7 subscribers, so we count [REDACTED] eyeballs. Or
8 is it based on the ratings that are achieved
9 in those areas?

10 A Based on my conversations with Mr.
11 Cuddihy and Mr. McGuinness, the [REDACTED] would
12 be subtracted out and therefore MASN would
13 suffer losses in advertising revenues
14 according to a strict formula, [REDACTED] times
15 some rate in the contract. That's my
16 understanding.

17 Q You had a conversation with Mr.
18 Cuddihy about that.

19 A Multiple times, yes.

20 Q Is that reflected anywhere in your
21 direct testimony?

22 A Yes.

1 Q The fact that that's the formula
2 that you just described?

3 A Yes.

4 Q Can you point that out to me
5 please?

6 A Sure. I know that I have multiple
7 citations to Mr. Cuddihy in my direct
8 testimony.

9 Q Well, that's not my question. I'm
10 asking you the formula which you just
11 described which says that a subscriber is
12 pulled out irrespective of the ratings in a
13 given area for the purposes of --

14 A That's not my testimony.

15 MR. KIM: Objection. That wasn't
16 the question.

17 MR. BURKE: That was a couple
18 questions ago. That wasn't the last one.

19 THE WITNESS: You just gave -- I
20 thought --

21 JUDGE SIPPEL: Let's not argue.
22 Just rephrase. Whatever answer you're looking

1 for, just rephrase and go at it.

2 BY MR. BURKE:

3 Q What we're trying to get at is I
4 believe it was your testimony that when you're
5 calculating advertising revenues you treat an
6 eyeball as an eyeball irrespective of whether
7 the ratings in a given area are high or low.
8 If that's not your testimony, that's fine.

9 A That was my testimony.

10 Q So in fact where areas have lower
11 rating the eyeballs are worth less than the
12 eyeballs that are in higher rated areas.

13 A I don't know if that second
14 statement flows from the first, but let me
15 just restate what I said before which was that
16 I'm certainly open to the possibility that the
17 ratings affect the rates. I just don't know
18 if there's a clause in the contract with an
19 advertiser that says if we fall in the ratings
20 our rates will fall.

21 Q Well, let me put it this way.

22 Ratings for MASN are lower in the disputed

1 areas than they are in the core areas. Isn't
2 that right?

3 A I think that's fair.

4 Q And doesn't that -- wouldn't that
5 also suggest that advertising is less valuable
6 to an advertiser on MASN in those areas, the
7 disputed areas, than it is in the core areas?

8 A I think that's fair.

9 Q Now we've been talking a lot about
10 qualitative considerations. Have you actually
11 calculated how much money MASN has lost as a
12 result [REDACTED]

13 [REDACTED] that are at issue here?

14 A I have calculated the foregone
15 licensing revenues. I have not calculated the
16 foregone advertising revenues, although I
17 think that would be possible with sufficient
18 data and the last point which is what's the
19 loss that would accrue to MASN from losing
20 programming rights, that would be very hard to
21 calculate. But it's a real loss and something
22 that I highlight in my report that I want to

1 highlight today.

2 Q So how much licensing revenues has
3 MASN lost?

4 A I think in the last paragraph of
5 my report I say it's on the order of [REDACTED]
6 [REDACTED] a year and so since Comcast has
7 engaged in this conduct it's now running at
8 about [REDACTED]

9 Q I believe in your direct testimony
10 you said [REDACTED] a year. Are you
11 correcting that now?

12 A No. I'm saying the same thing.

13 Q So it's [REDACTED] a year
14 approximately that MASN is foregoing in terms
15 of licensing revenues, right?

16 A It's a number between [REDACTED]
17 [REDACTED] Do you want to go right to it?

18 Q Certainly. Why don't you point it
19 to us, Dr. Singer.

20 A Okay.

21 JUDGE SIPPEL: And this is for the
22 period of 2006 to the present or to?

1 THE WITNESS: What I did, Your
2 Honor, is that I took it across the 24 months
3 that they have been refusing to carry MASN in
4 the contested areas. The number that I give
5 is in paragraph 103. It says, "As a result of
6 the foreclosure at issue here," it's the last
7 sentence, "MASN has foregone licensing
8 revenues of approximately [REDACTED]"

9 BY MR. BURKE:

10 Q So that's about [REDACTED] per
11 year.

12 A It sounds right.

13 Q Okay. So it's closer to [REDACTED]
14 [REDACTED]. I just want to make sure I know what the
15 answer is here.

16 A I'll grant you that.

17 Q Okay. So about [REDACTED] a year
18 in lost advertising revenues and that over a
19 total of --

20 MR. KIM: Objection. That's not
21 what he said.

22 MR. BURKE: I'm sorry.

1 JUDGE SIPPEL: That's true.

2 That's not what he said.

3 MR. BURKE: Okay.

4 BY MR. BURKE:

5 Q About [REDACTED] a year in, [REDACTED]
6 [REDACTED] a year, in licensing revenues.

7 A You got it right. You got it this
8 time.

9 Q All right, and that's over total
10 revenues of about what?

11 A Well, we can express it as a
12 fraction of total licensing revenues if you
13 want.

14 Q Well, let's go back to Comcast 87.
15 How about that?

16 A Okay.

17 Q And for the six months ended June
18 30, 2008 it shows total revenues of about [REDACTED]
19 [REDACTED], right?

20 A Right. I thought where we were
21 going is you were going to do a ratio of
22 licensing revenues to licensing revenues. But

1 now you want to add in advertising revenues in
2 the denominator.

3 Q I'm just talking about what the
4 ratio is to total revenues, yes.

5 A Okay. We can do that one. It's
6 like your last statistic. We can divide any
7 number by any number to get a number. But we
8 can do that one.

9 Q I'm asking the questions, Dr.
10 Singer. So if you don't mind, I'll ask you to
11 divide some numbers. So we got [REDACTED] of
12 revenue about for the first six months of
13 2008. Is that right?

14 A That is correct.

15 Q And is it -- Do you have any
16 reason to think that the total number of 2008
17 is different than about double that amount?

18 A I have no reason to question that.

19 Q So if we say [REDACTED] for
20 total revenues for 2008. And if we assume
21 about [REDACTED] of total revenues for 2008
22 what's the ratio of lost revenues, of lost

1 licensing revenues, to total revenues here?

2 A So lost annual licensing revenues
3 to lost annual total revenues. I just want to
4 make sure you want me to actually do that one.

5 Q That's correct.

6 A Okay. So I would do the [REDACTED] --

7 Q I think it's [REDACTED].

8 A Sorry. [REDACTED] I would do [REDACTED]
9 divided by [REDACTED] times two.

10 Q So about [REDACTED]
11 something like that.

12 A Sure.

13 Q Okay. So the foregone licensing
14 revenues here represent [REDACTED]
15 of MASN's total revenues. Is that fair for
16 2008?

17 A I think that's a fair back-of-the-
18 envelope that we can do on the fly here.

19 Q And we simply don't know how much
20 foregoing advertising revenue MASN might have
21 lost as a consequence of not having these
22 [REDACTED] subs, right?

1 A I think that one is calculable.
2 I've not done that. You would have to use
3 some kind of average, right? Some average
4 price per subscriber, price per subscriber
5 that MASN commands in its ad. You would have
6 to multiply them by [REDACTED]. You have to
7 multiply it by 12 months. And, of course, that
8 doesn't even consider the foregone or the lost
9 clients who are going to walk away because of
10 the gap in the coverage territory and, of
11 course, finally this does not capture the
12 foregone future licensing revenues that will
13 come about from losing programming as a result
14 of the gaps in the footprint.

15 Q I think my question was a simpler
16 one than that one, Dr. Singer. I simply asked
17 you you haven't calculated what the lost
18 advertising revenues are. Isn't that right?

19 A That is absolutely correct.

20 Q It will help us get out of here
21 more efficiently if you try to answer my
22 questions as opposed to giving -- You'll get

1 a chance on redirect, if you want to give a
2 speech on these issues.

3 MR. KIM: Objection, Your Honor.

4 JUDGE SIPPEL: What's the
5 objection?

6 MR. KIM: He's making a comment.
7 He's not asking a question.

8 JUDGE SIPPEL: Ask a question
9 please, sir. But he does have a right to
10 control --

11 MR. KIM: Absolutely, Your Honor.

12 JUDGE SIPPEL: It's cross
13 examination. That's all he's doing.

14 MR. KIM: Absolutely, Your Honor.
15 But he doesn't need to give him a lecture. He
16 just has to ask questions and ask the Court
17 for a ruling if he doesn't get the answers he
18 needs.

19 JUDGE SIPPEL: Well, now he can
20 argue what do you mean by what's a lecture as
21 opposed to an instruction. I mean he just
22 told him what he should be doing on his cross

1 examination.

2 MR. KIM: Very well, Your Honor.

3 JUDGE SIPPEL: He reminded him.

4 MR. KIM: Thank you, Your Honor.

5 JUDGE SIPPEL: Gently reminded

6 him. All right. Gently reminded him.

7 MR. KIM: Very well, Your Honor.

8 MR. BURKE: I'm always gentle,

9 Your Honor.

10 (Several speaking simultaneously.)

11 MR. KIM: I don't know if that was

12 gentle. If that's gentle, I hate to see what

13 --

14 (Laughter.)

15 JUDGE SIPPEL: All right. I'll go

16 back to politely.

17 BY MR. BURKE:

18 Q Now you would agree, Dr. Singer,

19 that some levels of foreclosure can be too

20 small a matter, right?

21 A Sure.

22 Q And in fact in your deposition